



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Inscom Electronics Corporation
File: B-225858
Date: February 10, 1987

DIGEST

1. Bid on a requirements-type contract in which the bidder inserted language making reductions or changes in quantity subject to the bidder's approval was properly rejected as nonresponsive since such language caused the bid to materially deviate from the terms of the solicitation.
2. Fact that agency may have improperly awarded contracts to nonresponsive bidders in other procurements is irrelevant and does not justify repetition of the error.
3. Where a bid, when read as a whole is susceptible of two reasonable interpretations, one of which renders the bid non-responsive, the bid may be properly rejected as ambiguous. Such ambiguities may not be corrected after bid opening since "clerical errors" which go to the responsiveness of a bid may not be remedied through mistake in bid procedures.

DECISION

Inscom Electronics Corporation (Inscom) protests the award of a contract to PBR Electronics, Inc. (PBR), by the Army Missile Command (MICOM) for the supply of instructor consoles under invitation for bids (IFB) No. DAAH01-86-B-A294. Inscom alleges that its bid was improperly rejected by MICOM as nonresponsive.

We deny the protest.

The IFB, as amended, called for the supply of a definite quantity of 85 instructor consoles. In addition, under item 0003, bidders were asked to submit a price for satisfying MICOM's requirements for additional consoles, estimated for bidding purposes as 142 units, which could be ordered by MICOM from the date of contract award through fiscal year

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1990. The IFB provided that orders placed under item 0003 could be no less than 35 units, nor more than 242 units, per order.

Inscom submitted a letter bid in advance of its formal bid package, both of which were timely received. The letter bid included "Item: 3. 142 @ \$5,150.00" and contained the following language: "[a]ny reduction in quantity quoted will require permission from Inscom Electronics Corporation." The formal bid package was rubber-stamped on five separate schedule pages, including that on which item 0003 appeared, with the following language: "changes in award quantity subject to acceptance by Inscom."

Bids were opened on schedule and at that time it was determined that Inscom was the fourth-low bidder. Subsequently, the first- and second-low bidders were rejected because of negative preaward surveys, and the third-low bidder was found nonresponsive for failure to acknowledge receipt of an IFB amendment. On the basis of the language quoted above from Inscom's bid, the protester's bid was rejected as nonresponsive by the agency and the contract was awarded to the fifth-low bidder, PRR, as the lowest responsive and responsible bidder.

In its initial letter of protest, Inscom simply stated that it could "in no way understand" why the above-quoted language contained in its letter bid and the legend it rubber-stamped on its formal bid package would render its bid nonresponsive.

The agency responded that the language in Inscom's bid rendered it nonresponsive because it caused the bid to deviate from a material requirement of the solicitation (i.e., quantity).

We have held that responsiveness involves whether the bid as submitted represents an unequivocal offer to provide the product or service as specified, so that acceptance of it would bind the contractor to meet the government's needs in all significant respects. See Power Test, Inc., B-218123, Apr. 29, 1985, 85-1 C.P.D. ¶ 484. Any bid which is materially deficient in this respect must be rejected. Id. Additionally, we have stated that a defect in a bid is material if it affects price, quality, quantity or delivery. Johnson Moving & Storage Co., B-221826, Mar. 19, 1986, 86-1 C.P.D. ¶ 273. In the instant case, the restrictive language included in Inscom's bid conflicted with the terms of the solicitation through which MICOM sought to satisfy its future requirements by making reductions or changes in quantity subject to Inscom's acceptance. As such, the bid deviated

from the material requirements of the solicitation and was properly rejected by the contracting agency.

In its comments on the agency's report to our Office, Inscom advanced for the first time a number of arguments as to why the legend it inserted in its bid should not render it non-responsive. None of these arguments has any merit.

Inscom argues that the Army has made awards to it in other procurements despite the inclusion of the above quoted language in its bids. In addition, Inscom asserts that the Army has made award under another solicitation to a bidder whose bid was nonresponsive for failure to offer the same price for its first article as for its production quantity despite a specific IFB instruction to do so. The acceptance of these bids, when compared to the rejection of this bid, Inscom argues, establishes a history of inconsistency in MICOM's evaluation of bids.

The fact that the Army may have made awards in similar circumstances is irrelevant here since improper award in one or more procurements does not justify repetition of the same error. See Wright Tool Co., B-212343, Oct. 12, 1983, 83-2 C.P.D. ¶ 457 and cases cited therein. Moreover, if Inscom thought objectionable the award of a contract to an allegedly nonresponsive bidder in the other solicitation mentioned above, it should have protested to this Office or another appropriate forum at that time.

Next, Inscom maintains that other language contained in its letter bid made it clear that it accepted all the terms of the solicitation. Specifically, below the statement that any reduction in quantity would require Inscom's permission, there appeared the following language: "Inscom accepts all terms and conditions of subject solicitation. There are no exceptions."

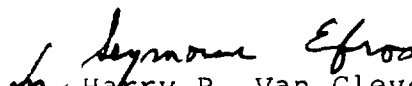
We have consistently held that, where a submission when read as a whole is susceptible of two reasonable interpretations, one of which is nonresponsive, the bid may be properly rejected as ambiguous. McGrail Equipment Co., Inc., B-222091, Mar. 26, 1986, 86-1 C.P.D. ¶ 293. Since this language directly contradicted the statement above it, as well as the language which Inscom inserted in its formal bid, the bid was at best ambiguous.

Finally, Inscom argues that the restrictive language relating to variations in quantity was inserted in its bid as the result of a "clerical error" and, as such, should have been corrected after bid opening through mistake in bid procedures. This argument is without merit since clerical

errors which affect the responsiveness of a bid cannot be corrected after bid opening through mistake in bid procedures. Meyer Tool and Mfg., Inc., B-222595, June 9, 1986, 86-1 C.P.D. ¶ 537; Kaydon Corp., B-214920, July 11, 1984, 84-2 C.P.D. ¶ 41; Federal Acquisition Regulation, 48 C.F.R. § 14.406-3 (1986).

We note that in its report to our Office, the agency observes that the protester failed to include a price for a line item in its formal bid package but submitted a price for the line item in its letter bid. The agency argues that this discrepancy also rendered Inscom's bid ambiguous, which supports the rejection of the bid. Inscom responds that the omission was a clerical error which it should have been allowed to correct after bid opening. We need not decide this issue since Inscom's bid clearly was nonresponsive for the reasons we have discussed above.

Accordingly, the protest is denied.


Harry R. Van Cleve
General Counsel